

January 22, 2007

**DECISION AND ORDER**  
**OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Betty N. Stair

Date of Filing: November 22, 2006

Case Number: TFA-0180

On November 22, 2006, Betty N. Stair filed an appeal from a determination issued to her on October 23, 2006 by the Department of Energy's (DOE) National Nuclear Security Administration Service Center, Albuquerque (NNSA). In that determination, NNSA responded to a request for documents Ms. Stair submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. NNSA determined that it could locate no documents responsive to Ms. Stair's request. This appeal, if granted, would require NNSA to perform an additional search and either release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

On August 11, 2006, Ms. Stair filed a FOIA request for records pertaining to her husband, Mr. Edward Stair. Specifically, Ms. Stair requested a copy of his personnel record from the Y-12 plant and any radiation exposure records pertaining to Mr. Stair. Letter from Carolyn Becknell, NNSA, to Betty N. Stair (October 23, 2006) (Determination Letter). In its determination letter, NNSA determined that it did not locate any records responsive to Ms. Stair's request. *Id.*

Ms. Stair appealed the NNSA determination to the DOE's Office of Hearings and Appeals (OHA). In her appeal, she challenges the adequacy of the search performed by NNSA for responsive documents. Letter from Ms. Stair to OHA (November 22, 2006) (Appeal Letter).

**II. Analysis**

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials."

*Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted NNSA to ascertain the scope of the search for responsive documents. NNSA informed us that when it received Ms. Stair's request it determined that any responsive records would be located at the Y-12 plant. NNSA forwarded Ms. Stair's request to the Y-12 plant for a search for records. *See* Electronic Mail Message from Terry Martin Apodaca, NNSA, to Diane DeMoura, OHA (December 5, 2006). The Y-12 plant informed NNSA that it did not locate any responsive records. As a result, NNSA issued a determination letter to Ms. Stair informing her that no responsive records were located. *Id.* In response to this appeal, NNSA contacted Y-12 to discuss the original search for responsive documents. NNSA now believes that the initial search was inadequate. *See* Electronic Mail Message from Terry Martin Apodaca to Diane DeMoura (January 16, 2007). Based on the foregoing information, NNSA has requested that we remand this appeal so that it may conduct an additional search for documents responsive to Ms. Stair's request. *Id.*

Accordingly, this appeal should be granted and the matter remanded to NNSA for an additional search. After completing its search, NNSA is to provide Ms. Stair with any responsive documents or to issue a new determination justifying the withholding of any responsive information.

It Is Therefore Ordered That:

- (1) The Appeal filed on November 22, 2006 by Betty N. Stair, OHA Case No. TFA-0180, is hereby granted as set forth in paragraph (2) below.
- (2) This matter is hereby remanded to the National Nuclear Security Administration Service Center, Albuquerque, for further processing in accordance with the instructions set forth in this Decision and Order.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz  
Senior FOIA Official  
Office of Hearings and Appeals

Date: January 22, 2007